

**Before the  
Committee on Transportation and Infrastructure's  
Subcommittee on Highways and Transit  
U. S. House of Representatives**

**Testimony of  
Fred P. McLuckie  
Legislative Director  
On  
Drug and Alcohol Testing of  
Commercial Motor Vehicle Drivers**

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Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee: My name is Fred McLuckie and I serve as Legislative Director for the International Brotherhood of Teamsters, (IBT). The Teamsters Union welcomes the opportunity to testify before the Committee on Transportation and Infrastructure's Subcommittee on Highways and Transit regarding issues concerning "Drug and Alcohol Testing of Commercial Motor Vehicle Drivers". It is our understanding that the purpose of this hearing is to obtain information on whether DOT drug testing regulations, as implemented under the current testing process, effectively detect commercial drivers who abuse controlled substances and once identified, ensure that these individuals do not perform safety-sensitive functions until they complete the return to duty process pursuant to the governing regulations.

The IBT has a long history of being proactive in our efforts to deter the abuse of controlled substances and alcohol in the trucking industry. For well over two decades, the IBT has negotiated drug and alcohol testing programs with virtually all of our larger employers in the trucking industry. The language in our collective bargaining agreements (CBA) provide our employers with a strict set of rules to ensure that the implementation of the testing programs comply with both the provisions of the agreements and governing regulations as promulgated by the Federal Motor Carrier Safety Administration (FMCSA) and its precursors. In addition, the CBAs provide the signatory parties with instruction on how to adjudicate disciplinary issues for which the regulations are "silent" and also provide guidance as to the process that must be followed to allow workers who have substance abuse issues the opportunity to obtain treatment and rehabilitation prior to returning to work in safety-sensitive functions. The IBT and many of its employers conduct periodic training programs for union and management representatives who are responsible for implementing the drug and alcohol testing programs. These training programs are designed to familiarize the participants with the drug and alcohol testing regulations and with the applicable articles of the collective bargaining agreements. At the request of Teamster Local Union affiliates, the IBT provides drug and alcohol testing training to rank-and-file driver membership. Our employers provide such training to rank-and-file driver membership as a result of CBA language and to comply with applicable regulations. We have provided copies of pertinent articles of a representative CBA for the committee's review.<sup>1</sup>

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<sup>1</sup> National Master Freight Agreement 2003 – 2008, Article 35.

## **Is there a problem?**

Based on a careful review of the FMCSA Survey for 2005, an “After Action Report “ submitted by the Oregon State Police, and drug testing results provided by large less-than-trailer load motor carriers that employ members of the IBT, we determined that illegal controlled substance use among commercial drivers not a major problem.

The IBT was informed that the Oregon State Police (OSP) conducted two roadside collections of urine specimens from commercial drivers in May and September of this year. A polling of our local union affiliates in Oregon indicated that although the local unions were aware of OSP efforts, none of our driver/members reported having actually participated. According to the OSP report for the May 2007 roadside check, of the nearly 500 drivers who agreed to voluntarily provide urine specimens, approximately 10 percent of the drivers were determined to have tested positive for a controlled substance.<sup>2</sup> This positive rate is significantly higher than survey results reported by the FMCSA which indicated a positive test result rate of less than 2 percent for the 2005 Drug and Alcohol Testing Survey. Although there appears to be a great disparity between the positive test rates for drivers in the two reports, detailed below are comments to explain the discrepancies in addition to providing summary drug testing data obtained from several of our larger motor carrier employers.

According to the 2005 Drug and Alcohol Testing Survey, which is a compilation and analysis of drug testing data from the previous calendar year, the Federal Motor Carrier Safety Administration estimates that approximately 1.7 percent of Commercial Driver’s License (CDL) qualified drivers used controlled substances. This estimate is based on a national survey of approximately 1,400 motor carriers that submitted data representing random controlled substances testing results of roughly 420,000 drivers. With respect to non-random testing, which included pre-employment, post-accident, and suspicion-based testing, the FMCSA estimates that 2.1 percent of the 504,448 test results reviewed were positive for controlled substances. The urine specimens, for which testing results were used in the FMCSA Survey, were collected, processed, analyzed, and validated in compliance with Health and Human Services (HHS) guidelines, as adopted by the Agency. The specimens were analyzed for five substances and / or their metabolites, i.e., amphetamines, cocaine, marijuana, opiates, and phencyclidine.

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<sup>2</sup> After Action Report OTC-12, Memorandum, Oregon State Police, July 2007.

In the April 2007 OSP study, roadside checks were conducted at the Woodburn Port of Entry, Interstate 5, at milepost 274 southbound, and 468 urine specimens were obtained during a two day period and analyzed for controlled substances. OSP reported positive test results for 9.65 percent of the drivers who participated. The OSP study analyzed urine specimens for the five drugs as required by FMCSA, in addition to benzodiazepines, methadone, and propoxyphene. There were positive test results for the three additional drugs for which analyses were conducted that contributed to the higher overall rate of positive test results reported in the OSP study.

In the FMCSA Survey, all drug testing results were validated by Medical Review Officers (MRO) who possess the necessary credentials, knowledge, and training to accurately conclude that the test results were the consequence of acts committed by the drivers which violate the FMCSA regulations. Prior to validating the test results as positive, pursuant to FMCSA regulations, the MRO must contact the driver to ensure that the result is not due a legitimate medical explanation, e.g., the driver has a valid prescription from a physician.<sup>3</sup>

Due to the manner in which the OSP study was conducted, i.e., roadside collections with anonymous donors, qualified MROs could not contact the drivers to validate the alleged positive test result. Consequently, it is likely that some of the alleged positive test results were due to the legal use of prescription drugs. This is particularly significant when one considers that FMCSA regulations permit commercial drivers to use certain prescription drugs while operating a commercial motor vehicle.

It should be noted that in the OPS study, opiates and synthetic opiates (Propoxyphene) accounted for 19 of the 47 tests for which a controlled substance was identified. According to occupational injury and illness data provided by the US Bureau of Labor Statistics, truck drivers were among the group of workers who experience the most work-related injuries and illnesses with days away from work.<sup>4</sup> Therefore, it is not unusual that these workers would use pain-killers, some of which may contain opiates to mitigate discomfort resulting from work-related injuries. Many drivers have legitimate prescriptions for these pain-killers and consequently may be allowed, in some instances, to operate commercial motor vehicles without violating the FMCSA regulations. In the FMCSA Survey, these “positive” test results, after being investigated by the MRO, would be reported as negative. Because there was no positive test result validation process incorporated

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<sup>3</sup> 49 CFR Part 40.137(b), Federal Motor Carrier Safety Regulations, May 2006.

<sup>4</sup> U.S. Bureau of Labor Statistics, Monthly Labor Review, April 2005.

into the OSP study, the assumption is that all positive opiate test results were due to illegal or improper use of controlled substances, which may be an erroneous assumption.

The same conclusion can be reached concerning the use of amphetamines. Although there are instances where illicit use of amphetamines occurs, there are cases where drivers have legal prescriptions and may drive while using the controlled substance. For example, the use of the prescription drug Adderall, which is oftentimes used to control attention deficit / hyperactivity or treatment-resistant depression can cause a positive test result for amphetamines.<sup>5</sup> However, a driver who has been properly prescribed the drug is not automatically disqualified from operating a commercial motor vehicle. The OSP study, again, assumed that all positive drug tests were due to illicit use of controlled substances. The FMCSA Survey took the necessary steps to confirm that positive test results for amphetamine use were the consequence of acts that violate the regulations.

Comparing the FMCSA and OSP reports is further complicated because the OSP tested for benzodiazepines, methadone, and propoxyphene, all of which are not included in the FMCSA 5-panel drug screen. Commercial motor vehicle operators are not prohibited from using benzodiazepines and propoxyphene provided that such use is monitored and approved by the driver's physician who is familiar with the safety-sensitive job tasks performed by the driver. In making the determination that using the prescribed drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle, the treating physician would consider whether the driver is compliant in taking the drug as prescribed, and if there are adverse side effects being experienced by the driver.

The IBT reviewed the random drug testing results for large Less-than-Trailer-Load (LTL) carriers for the period of 2003 to 2006. During this period the LTL companies conducted 64,477 random drug tests of which 395 were validated by MROs as being positive for a positive test rate of 0.6%.

For the reasons described above, the IBT concludes that there is no significant drug use problem among commercial drivers indicating violations of the FMCSA regulations.

### **FMCSA Oversight**

Strong enforcement is a key component in ensuring that motor carriers comply with FMCSA controlled substances regulations. Motor carriers that

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<sup>5</sup> Swotinsky, R., Smith, D.: The Medical Review Officer's Manual, 3<sup>rd</sup> Edition, 2006.

employ Teamster members have agreed to incorporate the drug testing programs into the collective bargaining agreements. Therefore, failure to comply with the drug testing regulations may result in enforcement by the FMCSA and trigger a grievance for violation of the collective bargaining agreement. In a sense, the union contract also acts as an enforcement mechanism which provides an additional impetus for unionized motor carriers to comply with the regulations.

The IBT recommends that the FMCSA take the necessary steps to enable the agency to enhance motor carrier compliance with drug testing regulations in the trucking industry.

### **HHS Oversight**

The IBT and motor carriers that are signatory to CBAs utilize certified laboratories in all of the negotiated testing programs. Although we have not encountered any problems of note with the performance of the certified laboratories or specimen collection personnel, we are keenly aware of the important role of each respective service provider. The credibility, employability, and reputations of our driver membership depend heavily on being able to demonstrate that they are safe, drug-free commercial motor vehicle operators. Therefore, it is necessary that the testing programs in which they are enrolled are able to consistently provide accurate, precise test results. As a result, it is incumbent on HHS and FMCSA to take strong, immediate enforcement actions against laboratories and other service providers who fail to comply with regulations as required.

### **Proposed Solutions**

#### **Establishing a Clearinghouse**

The IBT has been involved in discussions regarding the establishment of a clearinghouse for positive drug testing results. We have significant concerns about the creation of a clearinghouse with respect to issues related to driver privacy. However when we consider the fact that certain states, such as North Carolina, have moved forward in collecting this data, we are of the opinion that a national clearinghouse, operated by the Federal Government, may be preferable to these data being collected on a state-by-state basis. Provided below are comments regarding this issue.

Within the context as described above, the IBT could support the implementation of a centralized reporting and inquiry system and believes such a

system could have positive safety benefits; provided, however, that such a requirement should only be imposed if and when the FMCSA is able to devise a system that would: 1) adequately protect the drivers' confidentiality; 2) provide a reasonable mechanism for drivers to learn of and correct reporting errors; and 3) devise a uniform and fair method for expunging the records of drivers that have undergone treatment and are rehabilitated.

### **Drivers' Confidentiality**

The current rules require prospective employers to obtain written authorization from drivers before contacting former employers about previous drug test results. Employers should still be required to obtain such authorization before obtaining information from the national clearinghouse. Further, a system must be devised for the government to verify with reasonable certainty that the driver has consented before it releases the information.

Ideally every inquiry would be accompanied by a signed statement from the driver authorizing the inquiry and any release of data. However, we recognize that this may not be feasible or practical in the case of an electronic database. That said we do not believe it would be acceptable to simply require potential employers to check a box verifying that the driver has authorized release of the information to that employer.

A possible intermediate solution would be to require the employer to provide certain information that is reasonably likely to be obtained only from the driver and combine this with a system of random verification and severe penalties for violations. For example, in addition to providing the driver's name, address and telephone number, the employer could also provide the driver's social security number and/or CDL number. Then, while we recognize it would be impractical to verify every inquiry, a percentage significant enough to act as a deterrent to unauthorized inquiries (e.g., 10-15%) should be automatically subject to audit. A form letter could automatically be printed and sent to the drivers informing them that an inquiry has been made and by whom. If the driver did not authorize the inquiry, he or she should be prompted to contact the Agency. As a further deterrent, persons who make unauthorized inquiries should be subject to substantial penalties (e.g., \$10,000 per inquiry). Prospective employers should be made aware both of the audits that will be done to check on the authority of prospective employers to secure this information and the penalties that will be imposed for unauthorized inquiries.

## **Correcting Erroneous Information / Expunging Records**

Drivers should always be permitted to access their own records to ensure that there is no incorrect information. Also, employers should be required to notify drivers if an inquiry produces a report of a verified positive drug test. If there is incorrect information on a driver's record he or she must, as a matter of due process, be permitted to dispute that information and have the record corrected. Once a dispute is filed the burden of proof should be on the employer or MRO to prove that the information was correctly reported.

In addition, records should be expunged after three years, consistent with the current inquiry requirement. At the maximum, records should be only available for five years, which is the existing time frame for employers and MROs to maintain records. If records are maintained in the database longer than the underlying records are required to be kept, there will be no way to correct errors or verify disputed information after that period. Information that cannot be verified or challenged cannot reasonably be used against a driver. Furthermore, the regulations recognize that drivers can undergo treatment and become rehabilitated. In this regard, follow-up testing may only be performed for five years following the driver's return to duty after treatment. There is, therefore, absolutely no reason to permanently scar the driver's record for a positive drug test that occurred years before.

In addition, prior to the records being expunged, if a driver has undergone treatment, his record and reports to inquiring employers should reflect this fact.

## **CONCLUSION**

The IBT is of the opinion that based on the FMCSA Survey and drug testing data obtained from unionized L-T-L motor carriers, commercial drivers are highly compliant with the FMCSA drug testing regulations. We are also able to conclude that virtually all Teamster drivers due to the CBAs negotiated with their employers and the training programs thereto, are familiar with the prohibitions provided in the regulations. Among unorganized drivers the same conclusion can be reached albeit at a lower rate of compliance. The testing program as required by the FMCSA regulations provides commercial drivers with sufficient deterrence so as to compel them to comply with the regulations. Further, we feel that the results obtained in the OSP study are not representative of the state of driver compliance with the aforesaid regulations.



With respect to establishing a clearinghouse for positive drug test results, the extent to which any impact is positive or negative will depend largely upon how it is implemented. If a system can be devised that adequately protects the rights of drivers while improving the ability of employers to screen for unqualified drivers, the overall impact on the industry should be positive and such a system would likely be supported by the IBT.